In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 17-0103V
Filed: August 10, 2018
UNPUBLISHED

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DEVORA STAMM,	*	
	*	
Petitioner,	*	Special Processing Unit (SPU);
v.	*	Damages Decision Granting Additional
	*	Award; Influenza (Flu) Vaccine;
SECRETARY OF HEALTH	*	Shoulder Injury Related to Vaccine
AND HUMAN SERVICES,	*	Administration (SIRVA); RCFC 60(b)(6);
	*	Vaccine Rule 36
Respondent.	*	
	*	

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Lawrence R. Cohan, Anapol Weiss, Philadelphia, PA, for petitioner.
Daniel Anthony Principato, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING ADDITIONAL DAMAGES[1]

Dorsey, Chief Special Master:

On August 7, 2018, petitioner filed a joint motion to amend ("Motion to Amend") the judgment pursuant to RCFC 60. Because petitioner has demonstrated circumstances that justify relief under RCFC 60(b)(6), her motion for relief is granted and judgment is entered as set forth in this decision.

I.   Procedural History

On January 23, 2017, Devora Stamm ("petitioner") filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*, (the "Vaccine Act"). Petitioner alleged that she suffered a shoulder injury related to vaccine injury ("SIRVA") as a result of an influenza ("flu") vaccine she received on March 9, 2016. Petition at 1. On January 19, 2018, a decision was entered awarding compensation to petitioner based on respondent's proffer. Judgment was entered on January 23, 2018.

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[1] Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

On August 7, 2018, petitioner filed a joint motion requesting relief from judgment by amending the judgment to account for a correction in the amount of a state Medicaid lien. In support of this motion, petitioner states that after judgment was entered in this case, petitioner's counsel received a letter from New Jersey Medicaid that revised the amount of the Medicaid lien. The letter indicated that after its pro-rata reduction, the final lien amount was $27.94, instead of $56.70 that was originally quoted. The parties request the opportunity to account for this overpayment by refunding the additional funds to respondent. Petitioner represents that respondent has no objection to this motion. Therefore, petitioner's motion is **__GRANTED__** for the reasons set forth below.

II.   Applicable Legal Standards

Under Vaccine Rule 36, Appendix B, RCFC, a party may seek relief from judgment pursuant to the United States Court of Federal Claims, Rule 60. RCFC 60(b)(1)-(6). Rule 60(b) provides an "exception to finality,' that 'allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances.'" *Kennedy v. Sec'y of Health & Human Servs.*, 99 Fed. Cl. 535, 548 (2011) (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 529 (2005)). "The court has discretion regarding whether to grant relief under Rule 60(b), 'and the court may weigh equitable considerations in the exercise of its discretion.'" *Curtis v. United States*, 61 Fed. Cl. 511, 512 (Fed. Cl. 2004) (citing *Dynacs. Eng'g Co. v. United States*, 48 Fed. Cl. 240, 241-42 (2000)). Rule 60(b) as a remedial provision is to be "liberally construed for the purpose of doing substantial justice," *Patton v. Sec'y of Health & Human Servs.*, 25 F.3d 1021, 1030 (Fed. Cir. 1994). The court may grant relief from a final judgment on the following grounds:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence ..;

(3) fraud … misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable;

(6) any other reason that justifies relief.

RCFC 60(b).

III.   The Motion to Amend Judgment

On August 7, 2018, petitioner filed a motion to amend the judgment after petitioner received information from New Jersey Medicaid indicating that after completing a pro-rata reduction of the Medicaid line, the final lien amount was $27.94, instead of the $56.70 that was previously quoted. Therefore, petitioner requests that

the undersigned issue a judgment/order allowing petitioner to issue a check in the amount of $28.76 to respondent. Respondent has no objection to this request. The catchall provision of Rule 60(b)(6) provides for relief from judgment upon "any other ground that justifies relief." RCFC 60(b)(6). The undersigned grants petitioner's motion and finds the grounds for this request are necessary to correct a clear error.

IV.   Conclusion

The final Medicaid lien amount has been provided to petitioner and the judgment must be corrected to reflect the final lien amount. Therefore, the undersigned **GRANTS** petitioner's request and directs the Clerk of Court to issue judgment in favor of respondent to include the following information:

A lump sum payment of $**28.76** to reimburse respondent for an overpayment made to the State of New Jersey Medicaid to satisfy a Medicaid lien. The check should be made payable to:

U.S. Department of Health and Human Services
Memo: Devora Stamm, Case No. 17-0103

The check should be sent to:

Ms. Cheryl Lee
Division of Vaccine Injury Compensation/HRSA
5600 Fishers Lane, Mail Stop 08N194B
Rockville, MD 20857

IT IS SO ORDERED.

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s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

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